HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.27 of 2007

Appellant — Sub. Area Manager, West Chirimiri Colliery, S.E.C.L., Chirimiri Area Chirimiri, Distt. Korea (CG.)

versus

Respondents

1. Asith Kumar Guria, S/o Shri B.Guria, 325 A, Vivekanand Nagar, PO : Mopka, Bilaspur (C.G.)
2. Presiding Officer, Labour Court, Ambikapur

Appeal under Section 30 of the Workmen's Compensation Act, 1923

Present : Shri P.S.Koshy with Shri Vinod Deshmukh, counsel for the appellant.
No one appears for respondent No.1/claimant though served.

ORAL ORDER

(Passed on 31st August, 2007)

Heard.

(2) The appellant/employer is aggrieved by the impugned award dated 28-11-2006 passed by the Commissioner for Workmen's Compensation, Labour Court, Ambikapur (henceforth 'the lower Court'), whereby in a case of personal injury, compensation of Rs.2,67,694/- along with interest at the rate of 6% has been awarded against the appellant/employer.

(3) The appeal raises the following substantial question of law:

"Whether the finding of the Commissioner that the appellant sustained 95% permanent disability is justified particularly when no qualified medical practitioner has been examined by the workman to prove the disability?"

(4) Learned counsel for the appellant submitted that it is not in dispute in this case that the claimant had suffered injury arising out of and during the course of his employment on 29-06-2002. The sole point urged by the learned counsel for the appellant is that in view of the fact that after the accident occurring on 29-06-2002, the claimant was working till the age of his superannuation and in the absence of any medical evidence adduced by the claimant, the lower Court erred in assessing the disability suffered by the claimant at 95%. Learned counsel for the appellant prayed that the matter be remanded to the lower Court and a reasonable opportunity is afforded to respondent No.1/claimant for adducing medical evidence relating to the nature of injury suffered by the claimant.

(5) Having heard the submission of learned counsel for the appellant, I have perused the record of the lower Court. No medical evidence was adduced by the claimant to substantiate that he had suffered disability to the extent of 95%. Without examining the doctor giving the certificate of disability of 95% in favour of the claimant and affording an opportunity to the appellant/employer to cross-examine the expert medical witness on the question of disability, the finding recorded by the lower Court that the claimant had suffered 95% disability due to the accident, is contrary to the principles of natural

(34)

justice and is liable to be set aside. Substantial question of law is, therefore, answered in negative in favour of the appellant/employer that in the abovementioned circumstances the lower Court was not justified in recording a finding that the claimant had sustained 95% permanent disability due to the accident arising out of and during the course of employment.

(6) In my considered opinion, interest of justice would be served if while setting aside the impugned award passed by the lower Court, the matter is remanded to the lower Court with a direction to decide the matter afresh after giving a reasonable opportunity to the claimant to adduce medical evidence for proving the fact of permanent disability suffered by the claimant due to the accident arising out of and during the course of employment.

(7) Accordingly, the appeal is allowed. The impugned award is set aside. The matter is remanded to the Commissioner for Workmen's Compensation, Labour Court, Ambikapur with a direction that after giving a reasonable opportunity to the claimant for adducing medical evidence for proving permanent disability suffered, if any, the matter shall be decided afresh in accordance with law.

(8) The record of the Commissioner for Workmen's Compensation, Labour Court, Ambikapur be sent back along with a copy of this order forthwith.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal